

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING PHARMACY, INC. PRODUCTS LIABILITY LITIGATION

MDL No. 2419 Master Dkt.: 1:13-md-02419-FDS
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THIS DOCUMENT RELATES TO:

All Actions

**MEMORANDUM IN SUPPORT OF OBJECTOR SURGERY CENTER OF WILSON,
LLC’S OBJECTIONS TO SUBPOENA TO PRODUCE DOCUMENTS IN A CIVIL
ACTION AND NOTICE OF DEPOSITION AND MOTIONS TO QUASH**

Pursuant to Rule 45(c) of the Federal Rules of Civil Procedure, Respondent and Objector Surgery Center of Wilson, LLC (“the Center”) seeks an Order quashing the Subpoena *Duces Tecum*, dated June 21, 2013. None of the Center’s patients are part of the fungal meningitis outbreak, and none have experienced any reported illnesses. The Subpoena issued to the Center seeks documents that have no relevance to any claims that are currently pending or could be part of this Multi-District Litigation. The facts and the law as applied to this non-party require that the Subpoena be quashed.

I. FACTS SPECIFIC TO RESPONDENT

Surgery Center of Wilson, LLC is not a party to this litigation. It is located in Wilson, North Carolina, near Wilson Medical Center. Upon information and belief, the Center purchased three products from New England Compounding Pharmacy (NECP): methylprednisolone acetate (MPA), Omnipaque (IV contrast agent for x-rays); and an eye solution. All of the patients that received these products were contacted and monitored for any complications. None of the patients involved tested positive for bacterial meningitis or any other illness. The Center

complied with and actively cooperated with all Federal and State regulatory agencies during their investigations and subsequent recall of NECP products.

Similar to other non-parties who have been served with a Subpoena in this litigation, the PSC seeks to compel testimony regarding ten (10) categories of subject matter, and production of twenty-one (21) categories of documents. These areas of inquiry are so broad as to cover everything from specific purchases of products from NECP for a two year period preceding October 6, 2012, to Articles of Incorporation and Corporate Structure of the Center. The PSC did not identify any specific patient or group of patients of the Center as a potential party, and did not limit its discovery in any way to any documents potentially relevant to this litigation. The Subpoena as it relates to this Respondent and Objector is a naked attempt to conduct the type of “fishing expedition” that is specifically disfavored and disallowed under Rules 26 and 45 of the Federal Rules of Civil Procedure.

In the interests of avoiding cumulative and duplicative filings with the Court, and because identical subpoenas were issued to both this Respondent and Respondent Southeast Michigan Surgical Hospital, the undersigned Respondent makes reference to the arguments set forth and more fully explained in Sections III and IV of the *Memorandum of Law in Support of Motion of Objector Southeast Michigan Surgical Hospital to Quash Plaintiffs’ Subpoena Duces Tecum and to Participate in July 18 Conference by Telephone* (Doc. 298), filed with the Court on July 15, 2013. Given that on the issues involved in these motions, the law of the Fourth Circuit mirrors that of both the First Circuit and Sixth Circuit, those arguments are hereby incorporated by reference and adopted by this Respondent as if fully set forth herein.

DATED this 16th day of July, 2013.

/s/ C. Houston Foppiano

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Memorandum in Support of Objector Surgery Center of Wilson, LLC's Objections to Subpoena to Produce Documents in a Civil Action and Notice of Deposition and Motions to Quash to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to those parties by operation of the court's electronic filing system.

Dated: July 16, 2013

/s/ C. Houston Foppiano
C. Houston Foppiano
Attorney for Surgery Center of Wilson, LLC